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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
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11 RODERICK OLAF FONSECA,  
12 CDCR #G-62092,

13 Plaintiff,

14 vs.  
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16 CALIFORNIA DEPARTMENT OF  
17 CORRECTIONS AND  
18 REHABILITATION; JEFFREY A.  
BEARD, Ph.D., Secretary,

19 Defendants.  
20

Civil No. 14cv0787 LAB (BLM)

**ORDER:**

**(1) GRANTING PLAINTIFF'S  
MOTION TO PROCEED  
IN FORMA PAUPERIS  
[Doc. No. 2]**

**AND**

**(2) DIRECTING U.S. MARSHAL  
TO EFFECT SERVICE OF  
COMPLAINT PURSUANT TO  
FED.R.Civ.P. 4(c)(3) AND  
28 U.S.C. § 1915(d)**

21 Roderick Olaf Fonseca ("Plaintiff"), who is currently incarcerated at California  
22 State Prison in Calipatria, California ("CAL"), and proceeding pro se, has filed a civil  
23 rights complaint ("Compl.") pursuant to 42 U.S.C. § 1983 (Doc No. 1).

24 Plaintiff claims the California Department of Corrections and Rehabilitation's  
25 ("CDCR") implementation of a new "Jewish Kosher diet meal plan" ("JKDP") at CAL  
26 violates his rights to free exercise and equal protection under the First and Fourteenth  
27 Amendments. *See* Compl. at 3. Plaintiff further claims the JKDP violates his rights as  
28 an observant Jew under the Religious Land Use and Institutionalized Persons Act

1 (“RLUIPA”), by “forcing [him] to become vegetarian.” *Id.* Plaintiff seeks injunctive  
2 relief as well as monetary damages “to be determined at trial.” *Id.* at 7.

3 Plaintiff has not prepaid the civil filing fee; instead he has filed a Motion to  
4 Proceed *In Forma Pauperis* (“IFP”) pursuant to 28 U.S.C. § 1915(a) (Doc. No. 2).

#### 5 **I. MOTION TO PROCEED IFP**

6 All parties instituting any civil action, suit or proceeding in a district court of the  
7 United States, except an application for writ of habeas corpus, must pay a filing fee of  
8 \$400. *See* 28 U.S.C. § 1914(a).<sup>1</sup> An action may proceed despite a plaintiff’s failure to  
9 prepay the entire fee only if he is granted leave to proceed IFP pursuant to 28 U.S.C.  
10 § 1915(a). *See Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). However, a  
11 prisoner granted leave to proceed IFP remains obligated to pay the entire fee in  
12 installments, regardless of whether his action is ultimately dismissed. *See* 28 U.S.C.  
13 § 1915(b)(1) & (2); *Taylor v. Delatoore*, 281 F.3d 844, 847 (9th Cir. 2002).

14 Under 28 U.S.C. § 1915, as amended by the Prison Litigation Reform Act  
15 (“PLRA”), a prisoner seeking leave to proceed IFP must submit a “certified copy of the  
16 trust fund account statement (or institutional equivalent) for the prisoner for the six-  
17 month period immediately preceding the filing of the complaint.” 28 U.S.C.  
18 § 1915(a)(2); *Andrews v. King*, 398 F.3d 1113, 1119 (9th Cir. 2005). From the certified  
19 trust account statement, the Court assesses an initial payment of 20% of (a) the average  
20 monthly deposits in the account for the past six months, or (b) the average monthly  
21 balance in the account for the past six months, whichever is greater, unless the prisoner  
22 has no assets. *See* 28 U.S.C. § 1915(b)(1); 28 U.S.C. § 1915(b)(4). The institution  
23 having custody of the prisoner then collects subsequent payments, assessed at 20% of  
24 the preceding month’s income, in any month in which the prisoner’s account exceeds

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27 <sup>1</sup> In addition to the \$350 statutory fee, all parties filing civil actions on or after  
28 May 1, 2013, must pay an additional administrative fee of \$50. *See* 28 U.S.C. § 1914(a)  
(Judicial Conference Schedule of Fees, District Court Misc. Fee Schedule) (eff. May 1,  
2013). However, the additional \$50 administrative fee is waived if the plaintiff is  
granted leave to proceed IFP. *Id.*

1 \$10, and forwards those payments to the Court until the entire filing fee is paid. *See* 28  
 2 U.S.C. § 1915(b)(2).

3 In support of his IFP Motion, Plaintiff has submitted a certified copy of his trust  
 4 account statement pursuant to 28 U.S.C. § 1915(a)(2) and S.D. CAL. CIVLR 3.2.  
 5 *Andrews*, 398 F.3d at 1119. The Court has reviewed Plaintiff's trust account statement,  
 6 as well as the attached prison certificate issued by an accounting clerk at CAL verifying  
 7 his available balances, and has determined that Plaintiff has no available funds from  
 8 which to pay filing fees at this time. *See* 28 U.S.C. § 1915(b)(4) (providing that "[i]n no  
 9 event shall a prisoner be prohibited from bringing a civil action or appealing a civil  
 10 action or criminal judgment for the reason that the prisoner has no assets and no means  
 11 by which to pay the initial partial filing fee."); *Taylor*, 281 F.3d at 850 (finding that 28  
 12 U.S.C. § 1915(b)(4) acts as a "safety-valve" preventing dismissal of a prisoner's IFP case  
 13 based solely on a "failure to pay . . . due to the lack of funds available to him when  
 14 payment is ordered.").

15 Therefore, the Court **GRANTS** Plaintiff's Motion to Proceed IFP (Doc. No. 2) and  
 16 assesses no initial partial filing fee per 28 U.S.C. § 1915(b)(1). However, the entire \$350  
 17 balance of the filing fees mandated will be collected by the CDCR and forwarded to the  
 18 Clerk of the Court pursuant to the installment payment provisions set forth in 28 U.S.C.  
 19 § 1915(b)(1).

## 20 **II. SCREENING PURSUANT TO 28 U.S.C. §§ 1915(e)(2) & 1915A(b)**

21 The PLRA also requires that the Court review complaints filed by all persons  
 22 proceeding IFP and by those, like Plaintiff, who are "incarcerated or detained in any  
 23 facility [and] accused of, sentenced for, or adjudicated delinquent for, violations of  
 24 criminal law or the terms or conditions of parole, probation, pretrial release, or  
 25 diversionary program," "as soon as practicable after docketing." *See* 28 U.S.C.  
 26 §§ 1915(e)(2) and 1915A(b). Under these statutes, the Court must sua sponte dismiss  
 27 complaints, or any portions thereof, which are frivolous, malicious, fail to state a claim,  
 28 or which seek damages from defendants who are immune. *See* 28 U.S.C.

§§ 1915(e)(2)(B) and 1915A; *Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc) (§ 1915(e)(2)); *Rhodes v. Robinson*, 621 F.3d 1002, 1004 (9th Cir. 2010) (discussing 28 U.S.C. § 1915A(b)).

“[W]hen determining whether a complaint states a claim, a court must accept as true all allegations of material fact and must construe those facts in the light most favorable to the plaintiff.” *Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000); *see also Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998) (noting that § 1915(e)(2) “parallels the language of Federal Rule of Civil Procedure 12(b)(6)”). In addition, courts “have an obligation where the petitioner is pro se, particularly in civil rights cases, to construe the pleadings liberally and to afford the petitioner the benefit of any doubt.” *Hebbe v. Pliler*, 627 F.3d 338, 342 & n.7 (9th Cir. 2010) (citing *Bretz v. Kelman*, 773 F.2d 1026, 1027 n.1 (9th Cir. 1985)). The court may not, however, “supply essential elements of claims that were not initially pled.” *Ivey v. Board of Regents of the University of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982).

As currently pleaded, the Court finds Plaintiff’s pleading is sufficient to survive the sua sponte screening required by 28 U.S.C. §§ 1915(e)(2) and 1915A(b).<sup>2</sup> Accordingly, the Court will direct U.S. Marshal service on Plaintiff’s behalf. *See* 28 U.S.C. § 1915(d) (“The officers of the court shall issue and serve all process, and perform all duties in [IFP] cases.”); FED.R.CIV.P. 4(c)(3) (“[T]he court may order that service be made by a United States marshal or deputy marshal . . . if the plaintiff is authorized to proceed *in forma pauperis* under 28 U.S.C. § 1915.”).

### III. CONCLUSION AND ORDER

Good cause appearing, **IT IS HEREBY ORDERED** that:

1. Plaintiff’s Motion to Proceed IFP pursuant to 28 U.S.C. § 1915(a) (Doc. No. 2) is **GRANTED**.

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<sup>2</sup> Plaintiff is cautioned that “the sua sponte screening and dismissal procedure is cumulative of, and not a substitute for, any subsequent Rule 12(b)(6) motion that [a defendant] may choose to bring.” *Teahan v. Wilhelm*, 481 F. Supp. 2d 1115, 1119 (S.D. Cal. 2007).

1           2.     The Secretary of the CDCR, or his designee, shall collect from Plaintiff's  
2 prison trust account the \$350 filing fee owed in this case by collecting monthly payments  
3 from the account in an amount equal to twenty percent (20%) of the preceding month's  
4 income and forward payments to the Clerk of the Court each time the amount in the  
5 account exceeds \$10 in accordance with 28 U.S.C. § 1915(b)(2). ALL PAYMENTS  
6 SHALL BE CLEARLY IDENTIFIED BY THE NAME AND NUMBER ASSIGNED  
7 TO THIS ACTION.

8           3.     The Clerk of the Court is directed to serve a copy of this Order on Jeffrey  
9 A. Beard, Secretary, California Department of Corrections and Rehabilitation, P.O. Box  
10 942883, Sacramento, California, 94283-0001.

11           **IT IS FURTHER ORDERED** that:

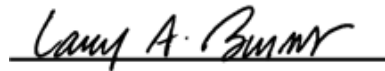
12           4.     The Clerk shall issue a summons as to Plaintiff's Complaint (Doc. No. 1)  
13 upon Defendants and shall forward it to Plaintiff along with a blank U.S. Marshal  
14 Form 285 for each Defendant. In addition, the Clerk shall provide Plaintiff with a  
15 certified copy of this Order and a certified copy of his Complaint (Doc. No. 1) and the  
16 summons so that he may serve each named Defendant. Upon receipt of this "IFP  
17 Package," Plaintiff is directed to complete the Form 285s as completely and accurately  
18 as possible, and to return them to the United States Marshal according to the instructions  
19 provided by the Clerk in the letter accompanying his IFP package. Upon receipt, the  
20 U.S. Marshal shall serve a copy of the Complaint and summons upon each Defendant as  
21 directed by Plaintiff on the USM Form 285s. All costs of service shall be advanced by  
22 the United States. *See* 28 U.S.C. § 1915(d); FED.R.CIV.P. 4(c)(3).

23           5.     Defendants are thereafter **ORDERED** to reply to Plaintiff's Complaint  
24 within the time provided by the applicable provisions of Federal Rule of Civil Procedure  
25 12(a). *See* 42 U.S.C. § 1997e(g)(2) (while a defendant may occasionally be permitted  
26 to "waive the right to reply to any action brought by a prisoner confined in any jail,  
27 prison, or other correctional facility under section 1983," once the Court has conducted  
28 its sua sponte screening pursuant to 28 U.S.C. § 1915(e)(2) and § 1915A(b), and thus,

1 has made a preliminary determination based on the face on the pleading alone that  
2 Plaintiff has a “reasonable opportunity to prevail on the merits,” the defendant is required  
3 to respond).

4 6. Plaintiff must serve upon the Defendants or, if appearance has been entered  
5 by counsel, upon Defendants’ counsel, a copy of every further pleading or other  
6 document submitted for consideration of the Court. Plaintiff must include with the  
7 original paper to be filed with the Clerk of the Court a certificate stating the manner in  
8 which a true and correct copy of any document was served on Defendants, or counsel for  
9 Defendants, and the date of service. Any paper received by the Court which has not been  
10 filed with the Clerk or which fails to include a Certificate of Service will be disregarded.

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12 DATED: August 19, 2014

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14 **HONORABLE LARRY ALAN BURNS**  
15 United States District Judge  
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